

Senate General Welfare Committee Amendment No. 1

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2864

House Bill No. 2485*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2 through 15 as a new chapter:

SECTION 2. As used in this chapter, unless the context otherwise requires:

- (1) "Department" means the department of human services;
- (2) "Commissioner" means the commissioner of human services;
- (3) "Adult day care" means services to adult recipients pursuant to an individualized plan of care designed to maintain or restore each recipient's optimal capacity for self-care through medical or social services; and
- (4) "Adult day care center" means a facility which provides adult day care services.

SECTION 3. No person or public agency within this state shall provide adult day care in this state, without first obtaining a license as provided in this chapter.

SECTION 4. The department, prior to issuing a new license, shall secure from an appropriate law enforcement agency records of any criminal activity, other than minor traffic violations, of the administrator, program director, fiscal officer, direct care workers, and paid employees of the proposed adult day care center. The department shall obtain the records each time these positions are to be filled. A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of a license.

SECTION 5. If an adult day center is operated only by a municipality or county or by a nonprofit corporation, no part of the net earnings may lawfully inure to the benefit of any private

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shareholder or individual. An applicant for initial licensure as an adult day care center shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, the following:

(a) Evidence satisfactory to the department that the applicant, its directors, and officers, if the applicant is a nonprofit corporation, and the person designated to manage the day-to-day affairs of the proposed adult day care center are of reputable and responsible character.

(b) Evidence satisfactory to the department of the ability of the applicant to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto by the department.

(c) Such other information as may be required by the department for the proper administration and enforcement of this chapter.

SECTION 6. The department may issue a provisional license.

(a) If a licensed adult day care center or an applicant for a license has not been previously licensed, the department may only issue a provisional license to the center as provided in this chapter.

(b) A provisional license to operate an adult day center shall terminate one (1) year from the date of issuance.

(c) Within thirty (30) days prior to the termination of a provisional license, the department shall give the adult day center a full and complete inspection, and, if the adult day center meets all applicable requirements for licensure, a regular license shall be issued. If the adult day center does not meet the requirements for licensure but has

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made substantial progress towards meeting the requirements, as determined by the department, the initial provisional license shall be renewed for six (6) months.

(d) If the department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the department determines upon its inspection made within thirty (30) days prior to the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate an adult day center has been denied by the department, the applicant may contest the denial by filing a contested case proceeding. The proceeding to review the denial shall be conducted pursuant to the Uniform Administrative Procedures Act of Tennessee Code Annotated, Title 4, Chapter 5.

(f) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

SECTION 7. (a) The department may issue a provisional license to an adult day care center only if:

(1) The adult day care center and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter;

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(2) No violation of this chapter or a regulation adopted under this chapter exists in the adult day care center which jeopardizes the health or safety of patients;

(3) The applicant has adopted a plan for correction of any existing violations which is satisfactory to the department.

(b) A provisional license issued under this section shall expire not later than one (1) year after the date of issuance, or at an earlier time as determined by the department at the time of issuance, and may not be renewed.

(c) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

SECTION 8. No applicant which is licensed as a health facility, community care facility, or clinic may be issued a license for an adult day care center while there exists a substantial, uncorrected violation of the statutes or regulations relating to such license.

SECTION 9. Each applicant for a new license or renewal submitted to the department shall be accompanied by an annual fee of two hundred fifty dollars (\$250).

SECTION 10. Each license issued or renewed pursuant to this chapter is not transferable, and the initial license shall expire twelve (12) months from the date of its issuance. The commissioner may approve applications for relicensure for a period of up to twenty-four (24) months. An application for annual renewal of a license, accompanied by the required fee, shall be filed with the department not less than thirty (30) days prior to the expiration date. Failure to submit a renewal application prior to such date shall result in expiration of the license.

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SECTION 11. Immediately upon the denial of any application for issuance or renewal of a license, the department shall notify the applicant in writing. Not later than ten (10) days after the department mails the notice, the applicant may submit a written petition for a hearing to the department. Upon receipt by the department of the petition in proper form, such petition shall be set for hearing. The hearing shall be held within sixty (60) days of receipt of the petition. The proceedings shall be conducted in accordance with the Uniform Administrative Procedures Act, in Title 4, Chapter 5, with the department having all the powers granted therein to ensure:

- (a) Compliance with regulations adopted pursuant to this chapter;
- (b) Continued demonstrated community need;
- (c) Conformity of the program to individual participants' assessed and reassessed needs and interests with particular attention to visual, auditory, and equipment needs;
- (d) Suitability of program changes to the community and participants served; and
- (e) Compliance with any requirements of law or regulations pertaining to fire and safety.

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SECTION 12.

(a) The department may conduct inspections of every licensed facility. The evaluation method adopted by the department shall be published and distributed to each licensed adult day care center and any other interested person.

(b) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing adult day care at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter or any regulation adopted hereunder.

(c) The department shall make available to all interested persons a list of all licensed adult day care centers and the services that each facility provides. Reports on the results of each inspection, evaluation, or consultation performed pursuant to this section shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection during regular business hours.

SECTION 13. The department shall require each adult day care center to have a governing board. The governing board of an adult day care center, having final authority and responsibility for conduct of the center, shall be comprised of four (4) or more persons. The governing board may include members who may be recipients of the services of the adult day care center, relatives of such recipients, or representatives of community organizations with particular interest in programs for the elderly. No member of the governing board, nor any member of the immediate family thereof, shall have any

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direct or indirect interest in any contract for supplying services to the adult day care center.

SECTION 14. Each adult day care center that files an affidavit with the department as of January 1, 1997, certifying that such facility is in existence and in operation shall have two (2) years to fully comply with the provisions of this chapter.

SECTION 15. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. The provisions of this act are declared to be remedial in nature and the provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 18. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 1997, the public welfare requiring it.